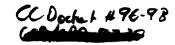
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Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C.

Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic)) CCB/CPD 97-30))	

INTERMEDIA COMMUNICATIONS INC. COMMENTS IN SUPPORT OF ALTS REQUEST FOR LETTER RULING

Intermedia Communications Inc. ("Intermedia"), by its undersigned counsel and pursuant to the Public Notice¹ issued by the Commission on July 2, 1997, hereby submits its Comments supporting the Association for Local Telecommunications Services ("ALTS") request for a letter ruling confirming that local calls to internet service providers ("ISPs") are subject to mutual compensation under Section 252 of the Telecommunications Act of 1996.

I. INTRODUCTION

As one of the country's largest and fastest-growing competitive local exchange carriers, Intermedia provides a full suite of local, long distance and enhanced services (including internet services) to business and government end user customers, long distance carriers, ISPs, resellers and wireless carriers. Intermedia has negotiated interconnection agreements with most of the large incumbent local exchange carriers ("ILECs"), and is using interconnection as an important means of providing services to its customers. As a result of Intermedia's recent acquisition of DIGEX Incorporated, a national ISP, Intermedia is now

¹ Public Notice, DA 97-1399, "Pleading Cycle Established for Comments on Request by ALTS for Clarification of Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic," rel. July 2, 1997.

able to provide internet connectivity, web site management, and private network solutions on a nationwide basis. The ALTS petition therefore raises matters of critical importance to Intermedia.

Intermedia strongly supports ALTS' request for a letter ruling. Clarification that local calls to ISPs are fully subject to mutual compensation will ensure that industry practices comply with the 1996 Act. Clarifying that the Act requires interconnection and reciprocal compensation for the transport and termination of internet traffic will meet the Act's goals to foster local service competition, to promote new technologies and to foster efficient network development. The clarification sought by ALTS is also necessary to eliminate unnecessary regulatory uncertainty for the industry. Without such ruling the ILECs intent to arbitrarily establish policy in conflict with Commission and Administration principles.

II. THE TELECOMMUNICATIONS ACT OF 1996 REQUIRES RECIPROCAL COMPENSATION FOR LOCAL CALLS TO INTERNET SERVICE PROVIDERS.

Sections 251(b)(5), 251(c)(2) and 252(d)(2) establish the obligation of ILECs to interconnect with competitive carriers and to provide reciprocal compensation for the exchange of traffic. The 1996 Act defines the interconnection obligations of incumbent local exchange carriers ("ILECs") in very broad terms, and provides no basis for excluding local calls to ISPs from interconnection and reciprocal compensation arrangements. Section 3(47)(A) defines "telephone exchange service" simply as "service within a telephone exchange, or within a connected system of telephone exchanges " 3(47)(B) provides an even broader definition of telephone exchange service by eliminating the reference to an

"exchange," and focuses on the ability of a subscriber to "originate and terminate a telecommunications service."

The extremely broad scope of this definition is further clarified by the definition of "telecommunications service" under the Act. Section 3(46) of the Act defines
"telecommunications service" simply as "the offering of telecommunications for a fee directly to the public " Section 3(43) of the Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing " The ILECs' attempts to exclude local calls to ISPs from interconnection and reciprocal compensation arrangements is wholly inconsistent with the extremely broad definitions contained in the Act. To the contrary, the expansive definitions of "service" in the Act reflect Congress' attempt to avoid restrictive provisions, and to craft legislation that would accommodate new technologies and new service applications.

As ALTS indicated in its request for a letter ruling, historically, the Commission has required that calls to ISPs be treated as local calls by ILECs regardless of the call's ultimate destination. The Commission's long-standing treatment of calls to ISPs is fully consistent with the Commission's implementation of Sections 251 and 252 of the 1996 Act as they relate to the handling of traffic through reciprocal compensation agreements.²

² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325, rel. Aug. 8, 1997, at ¶¶ 356-365, 716-732, and 1033-1038.

The Commission's Access Charge Reform Order³ also makes clear that calls to ISPs are treated as local calls. In that Order, the Commission specifically prohibited the imposition of access charges on calls to ISPs.

... [I]ncumbent LECs will not be permitted to assess interstate per-minute access charges on ISPs. We think it possible that had access rates applied to ISPs over the last 14 years, the pace of development of the Internet and other services may not have been so rapid. Maintaining the existing pricing structure for these services avoids disrupting the still-evolving information services industry and advances the goals of the 1996 Act to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.⁴

If reciprocal compensation is not provided for ISP traffic routed over interconnection arrangements, then access charges will apply, in direct contravention of the Commission's Order. Therefore, in order to avoid violation of Commission rules, ILECs must provide reciprocal compensation for such traffic.

III. COMPELLING PUBLIC POLICY CONCERNS REQUIRE THE INCLUSION OF LOCAL CALLS TO ISPS IN INTERCONNECTION ARRANGEMENTS.

A. Exclusion of Calls to ISPs Would Unreasonably Inhibit the Continued Development of the Most Promising New Communications Technologies.

Exclusion of calls to ISPs from reciprocal compensation requirements under the Act would clearly contravene the Commission's stated policies in favor of promoting internet services. It also would contravene the Administration's internet policies. The Clinton Administration's recently-finalized policy paper, "Global Framework for Electronic

³ Access Charge Reform, CC Docket No. 96-262, CC Docket No. 94-1, CC Docket No. 91-213, CC Docket No. 95-72, FCC 97-158, rel. May 16, 1997 ("Access Charge Reform Order").

⁴ Access Charge Reform Order at ¶ 344.

Commerce, " sets five broad policy goals: (1) "The private sector should lead;" (2) "Governments should avoid undue restrictions on electronic commerce;" (3) "Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent, and simple legal environment for commerce;" (4) "Governments should recognize the unique qualities of the Internet;" and (5) "Electronic commerce over the Internet should be facilitated on a global basis." Within the context of these five goals, the Administration specifically orders all federal agencies to review their policies and eliminate processes, rules, or procedures that unduly interfere with electronic commerce. The letter ruling sought by ALTS would eliminate attempts to exclude calls to ISPs from interconnection and reciprocal interconnection arrangements, and so will eliminate a significant impediment to the continued development of the internet. It is fully consistent with -- and in fact is required by -- the Administration's directives.

B. Inclusion of Calls to ISPs Will Promote Continued Deployment of Innovative Technology in ILEC and Competitive Local Exchange Carrier ("CLEC") Networks.

ILECs have argued that Internet use, with longer hang times than plain old telephone service (POTS), burdens their networks, and have attempted to use this argument as an excuse to exclude local calls to internet service providers from interconnection and reciprocal compensation arrangements.⁵ This approach, however, would limit the development of new services and applications by limiting technologies to ILECs' existing network configurations.

⁵ See, e.g. Letter from Patrick A. Hanley, President, Carrier Services, Bell Atlantic Network Services, Inc., to Tom Allen, Vice President-Strategic Planning and Regulatory Policy, Intermedia Communications Inc., dated June 23, 1997, and appended to this filing as Attachment A.

Such an arbitrary solution is a crude and ineffective means of addressing the ILECs' perceived problems.

Intermedia agrees that there may be more efficient means of routing digital traffic, whether it is associated with internet usage or other applications. As ILECs and competitive carriers increasingly offer internet services in their mix of product offerings, market forces should provide strong incentives to deploy new data technologies in the most efficient manner possible. A grant of the letter ruling sought by ALTS would therefore reaffirm Commission policy and ensure the continued deployment of new technologies through the provision of an important financial incentive for both ILECs and competitive carriers to maintain and implement modern and efficient networks. In contrast, the ILECs' heavy handed attempts to exclude calls to internet providers from interconnection arrangements simply seek to avoid the need to deploy new technologies by creating artificial financial disincentives for carriers to provide innovative new services.

C. Segregation of Calls to ISPs From Interconnection Arrangements Would Establish Unwanted Barriers to Entry for Competitive Carriers.

Currently, carriers do not deploy the equipment necessary to identify and measure calls to ISPs as ISP traffic is handled in the same manner as any other local traffic.

Therefore, as a practical matter, segregation of local traffic to ISPs from other local traffic for local interconnection purposes could not be enforced. Development of procedures and mechanisms supporting segregation of calls to ISPs from interconnection arrangements would be impracticable and unreasonably burdensome. Further, the economic burden of forced

deployment of new measurement equipment would constitute a barrier to competitive entry, in violation of the 1996 Act and would unreasonably burden internet providers and users.

D. The Industry Needs the Certainty That Will Be Provided By a Letter Ruling.

The 1996 Act and the Commission's rules implementing the Act place emphasis on the interconnection process as the primary vehicle for promoting competition for local services. Intermedia and other competitive carriers, state regulators, and ILECs are making enormous investments of time and effort in negotiating and implementing interconnection agreements. Intermedia and other CLECs negotiated local interconnection agreements based upon the expectation that ISP traffic would be included for purposes of reciprocal compensation. Modifying these agreements after they have been negotiated and approved could significantly inhibit CLECs' ability to enter the marketplace. On an ongoing basis, confusion over the inclusion of local calls to ISPs in interconnection arrangements may invite appeals of arbitration decisions, and may make it impossible for competitive carriers and ILECs to reach negotiated interconnection arrangements on a voluntary basis. This confusion would promote unnecessary litigation, would delay the implementation of interconnection arrangements, and would make it exceedingly difficult for companies to develop business plans. The end result will be to inhibit competition in the local market -- a result which is directly contrary to the purposes of the Act.

IV. CONCLUSION

For the reasons discussed above, Intermedia strongly supports ALTS' request for a letter ruling and respectfully requests that the Commission expeditiously issue a letter ruling clarifying that carriers must provide reciprocal compensation for the transport and termination of local calls to internet service providers. Issuance of such a letter reaffirming the Commission's position relative to ISP traffic is clearly warranted and within the Commission's purview.

Respectfully submitted,

INTERMEDIA COMMUNICATIONS, INC.

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Its Attorneys

July 17, 1997

ATTACHMENT A

@ Bell Atlantic

Bell Atlantic Network Services, Inc. Two Bell Atlantic Plaza 1320 North Court House Road Ninth Floor Adlington, Virginia 22201 703 974-4800 FAX 703 974-6431 Patrick A. Hanley President Carner Services

June 23, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Tom Allen
Vice President-Strategic Planning and Regulatory Policy
Intermedia Communications
3625 Queen Palm Drive
Tampa, FL 33619

Dear Mr. Allen:

This letter addresses an issue that has arisen in the course of the implementation of interconnection agreements between Bell Atlantic (BA) and CLECs, including Intermedia Communications, Inc. (ICI). BA has become aware that some CLECs have included telephone calls handed off to Internet Service Providers (ISPs) for carriage over the Internet in the reciprocal local call compensation and associated interconnection charges that the CLEC bills to BA. BA may have also included some ISP traffic in the local call compensation that it bills to CLECs.

It is inconsistent with the terms of the interconnection agreements between BA and ICI to bill reciprocal compensation for calls made through an ISP. The great majority of calls handed off to an ISP do not terminate at the ISP's local office. Rather, many ISP calls are placed for the purpose of using the ISP as a gateway to another telecommunications network, ic. the Internet, which then carries the call to locations outside the local calling area – often across the country or internationally. Telephone calls made to complete a connection over the Internet are not "Local Traffic" within the meaning of the interconnection agreements. In particular, such traffic does not "terminate[] to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ("EAS") area..." as defined in the agreements. Internet access traffic does not terminate either on a "Party's network" nor "within a given local calling area."

Accordingly, BA hereby:

(1) Requests that ICI provide, within 30 days of the date of this letter, a factually-supported estimate of the portion of the traffic, if any, that BA has sent in each of the last two billing months to the ICI interconnection point and which ICI has in turn delivered to an ISP (including any ICI affiliate that is an ISP). Please explain the methodology used by

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ICl to develop these estimates. BA will also consider any estimates of traffic that ICI has sent to BA that BA has delivered to an ISP that ICI can provide.

- (2) Provides notice that any traffic delivered by BA to ICI, ICI delivers to an ISP but seeks reciprocal compensation charges from BA, shall be disputed by BA subject to the dispute procedures contained in section 29 of the BA/ICI interconnection agreements.
- (3) Agrees to similar disputed amount procedures with respect to any ISP traffic delivered by ICI to BA, pursuant to the above paragraphs.

You may contact me on (703) 974-4800 with any questions or to discuss this matter further.

Sincerely,

1 Hardey